

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COUNTY OF NEWPORT**

At a meeting of the Town Council of the Town of Tiverton, County and State aforesaid, held at the Tiverton Town Hall, 343 Highland Road, on the 12th day of November, 2013 A.D. at 7:00 p.m.

President Roderick opened the meeting with the Pledge of Allegiance to the Flag.

A Moment of Silence was held in observance of Veterans Day and all who served. A brief Moment of Silence was also held for a former Police Chief, Biff Dias.

Roll Call:	Edward A. Roderick-President	William P. Gerlach
	Denise M. deMedeiros-Vice President	Jay J. Lambert
	James Arruda	Brett N. Pelletier
	Joan B. Chabot	

Town Administrator, James C. Goncalo and Town Solicitor, Andrew M. Teitz were also present.

Approval of Consent Agenda:

All items listed with (CA) are to be considered routine by the Town Council and will be enacted by one motion. There will be no separate discussion of these items unless a member of the Council or a member of the public so requests, in which event the item will be removed from Consent Agenda (CA) consideration and considered in its normal sequence on the agenda.

Council President Roderick read the items on the Consent Agenda. There were no removals.

Councilor Gerlach made a motion, seconded by Councilor deMedeiros to accept the Consent Agenda as presented. Motion passed unanimously.

The Consent Agenda was as follows:

CONSENT AGENDA:

A-1-Approval of Minutes of Previous Meetings:

- a. Approval of Minutes Regular Council Meeting October 28, 2013
- b. Approval of Executive Session Minutes October 28, 2013
- c. Approval of Open Portion of Special Council Meeting Minutes November 4, 2013
- d. Approval of Special Council Meeting Executive Session Minutes November 4, 2013

A-2-Receipt of Minutes from the Following Boards, Commissions:

- a. Art Council
- b. Historic Preservation Advisory Board (2)
- c. Wastewater Management

A-3-Correspondence – Receive and File:

- a. October Prevention Coalition News Letter

A-4-Approval of Tax Assessor Abatements

A-5-Denise Saurette, Treasurer – Distribution of Quarterly Budget Summary Report Submitted to State of RI Office of Municipal Finance

A-6-Kate Michaud Administrative Officer Report of Activities for October

A-7-Distribution of Town Administrator's October Monthly Report

BUSINESS BROUGHT BEFORE THE COUNCIL

OPEN PUBLIC FORUM:

Roger Bennis thanked Town Administrator, James Goncalo for his many years of service to the Town and to the citizens of the Town. Suggested several more changes to the proposed Foreclosed and Vacant Ordinance which was significantly improved. See five basic problems, 1) overgrown cannot be left open to interpretation, 2) vacant must exclude vacationers, etc. 3) not being fined within a reasonable amount of time, 4) a notice from the street is a notice to criminals and 5) time to address problems required. Mr. Bennis handed out copies of his remarks to the Council.

PUBLIC HEARINGS & PUBLIC PRESENTATIONS:

Public Hearing for Proposed Ordinance Amendment – Chapter 47 -Foreclosed and Vacant Properties a. Town Solicitor's Proposed Further Amendments for Presentation at Public Hearing – Continued from October 28, 2013 – For Vote – Public Portion Closed

Solicitor Teitz noted if the Council accepts the remarks handed out by Mr. Bennis, if the Council accepts this from Mr. Bennis, need to reopen the Public Hearing, have to make available to anyone who wants to speak. Did say public portion was closed at the last meeting.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to reopen the public portion of the Public Hearing. Motion passed unanimously.

President Roderick reopened the public hearing, requested comments from the public 3 times. There were no further comments from the public.

Councilor Gerlach made a motion, seconded by Councilor Pelletier to close the public portion of the Public Hearing. Motion passed unanimously.

Councilor Chabot noted in Section 47-10, Abatement by Town, the sentence “in addition to incurring penalties as provided in this chapter” did not see any penalties. Solicitor Teitz explained the violation is considered to be a violation of the Town Ordinance, up to \$500 each day, is the default penalty under the code. Councilor Chabot questioned if the property owner does not abate, cost is itemized and presented to the Owner, why is the Town required. Solicitor Teitz explained the Town is not required to do anything, ordinance has the word “may”, mainly directed to the boarding aspect to make secure. This is done under the direction of the Building Official. Have other mechanisms to provide notice. Councilor Chabot noted the ordinance takes effect immediately so every owner has to provide the Town a notice of vacancy in 10 days. Question is how do they know this has passed? Solicitor Teitz explained this was not designed to be used against everyone is another tool, an official citation. The Solicitor was asked by the Town Administrator (T/A) to prepare an ordinance, if the Council does not consider this to be a problem, do not have to vote for it. T/A Goncalo explained, have more foreclosures, banks are not taking care of them. Councilor Chabot noted already have laws on the books, State Laws; do not see the purpose of this ordinance as another ordinance to use especially with the time frame involved.

Councilor Gerlach looked for clarification, the difference between the local ordinance and the State level. Solicitor Teitz explained notice and posting is not covered by State law. Councilor Pelletier had previously requested a copy of the most recent State of Rhode Island Property Maintenance Code. Building Official, Gareth Eames explained, was adopted in 2010, just receive the book, will loan to Councilor Pelletier. Councilor Pelletier, as a policy document, has the impact of the important things the Town considers. Mr. Eames, under State code the enforcing party, had extreme cases, varying success to locate owners, some have regional maintenance companies. Councilor Lambert supports the ordinance, will be enforced like other ordinances, with common sense. Councilor Arruda agreed with Mr. Bennis, the violating party needs more time to correct before issuing a fine, correct language about property maintenance. Could be resentment from neighbors, eats up Town

resources. President Roderick agreed, enforcement has to be tempered with judgment, safety an issue with blatantly abandoned buildings. Councilor Arruda noted was a way to take action, request change to the time frame to 15 days, in Section 47-6. Solicitor Teitz observed the automatic numbering system changed some of the numbers in the edit, could add 15 days to correct the violation. Mr. Eames noted the problem with the 15 days was receipt of the notice, 30 days was not quite adequate if bank owned property. Solicitor Teitz explained, the Town has the power to agree, want a response not penalties, trying to get it cleaned up. The 15 days is used for other things as well. Solicitor Teitz clarified, amend 47-6 (b) from the 24 hours to 15 days following notification to the “Owner” unless a threat to public health and safety, section 47-8 is incorrectly numbered. Councilor Arruda noticed in 47-9 under Abatement there are two letter (b), second one should be (c), include “not less than 15 days” unless an immediate threat to public health and safety.

Councilor Chabot, in Section 47-2 Definitions suggested removing the following definitions not within the ordinance – Accessible in the first two paragraphs, Evidence of Vacancy in the fifth paragraph should be just Vacant Property. Councilor Gerlach suggested it would be beneficial for the Solicitor to come back with another document with the suggested updates. *Councilors also suggested changing* definitions, change Securing, at the start of the eighth paragraph, to Secured. In Section 47-8, Maintenance and Monitoring of Vacant Buildings, (a) (3), the last sentence has a typo in the second to the last sentence, “preventing the use or” or should be “of”. Councilor Chabot called this ordinance selective enforcement opens up the Town to questions.

Councilor Pelletier made a motion, seconded by Councilor Gerlach to approve the Foreclosed and Vacant Properties Ordinance inclusive of all the edits outlined and the renumbering. Councilor Gerlach, for point of clarification, questioned if the Town kept track of the number of violations for any ordinance. T/A Goncalo was not aware that was happening. President Roderick called for a voice vote- Councilor Gerlach – aye, Councilor Arruda – aye, Councilor Chabot- against, Councilor Lambert – aye, Councilor Roderick – aye, Councilor deMedeiros – aye and Councilor Pelletier – aye. Motion passed on a vote of 6-1.

The approved Foreclosed and Vacant Properties Ordinance inclusive of edits attached at end of minutes.

TOWN COUNCIL SITTING AS BOARD OF LICENSING
NON ADVERTISED PUBLIC HEARINGS FOR LICENSE RENEWALS - SUBJECT TO MEETING LEGAL
REQUIREMENTS (December 1, 2013 to November 30, 2014)

1. Approval of Entertainment Licenses

Atlantic Sports Pub, Inc., 70 Shove St.
Silva Brothers, Inc. /Barcello Family Restaurant, 1214 Stafford Rd.
Bayview Holy Ghost Citizen’s Club, 66 Bottom St.
Benjamin’s Sports Pub, Inc., 4 Stafford Rd.
Kfoury Inc. /Brantal’s Rest. / Banquet Facility, 91-97 Crandall Rd.
Father Joseph Boehr / Knights of Columbus, 28 Fish Rd.
Everett Lane, Inc. / Family Ties Restaurant, 221 Main Rd.
Huejan, Inc. / Lil’Bear Sports Lounge, 983 Main Rd.
Faithe J. Bortz / P.J’s Café, 301 State Ave.
Sandywoods Farm, Inc., 43 Muse Way
Senior Lifestyle /Sakonnet Bay LP, 1215 Main Rd.
Spring Restaurant, 118-120 Main Rd.
Susan’s Restaurant, Inc., 13 Crandall Rd.
Woodrow L. Silvia /VFW, 134 Shove St.

President Roderick read the list of Entertainment License Renewals, requested comments from the public three times. Seeing none, Town Clerk Mello noted no issues for these applicants.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to approve all the Entertainment License Renewals as listed for December 1, 2013 to November 30, 2014, subject to meeting all legal requirements. Motion passed unanimously.

Solicitor Teitz noted, do not have to read all, this has been posted, some communities don't post.

2. Tobacco Dealer's Licenses Renewals

Amerada Hess Corp, (39211) 1308 Stafford Rd .

Joshua Pavao d/b/a Cigarsmiths, 115 Stafford Rd.

CVS Pharmacy, 500 Main Rd.

NIMRAJ d/b/a Crossroad Liquors, 1540 Bulgarmarsh Rd.

East Lake Variety Inc, 750 East Rd.

SFS Corp d/b/a Elaine's Country Store, 1204 Fish Rd.-Continued to 11/25/13

Gray's Ice Cream Inc, 16 East Rd.

Maxi Drug South / Rite Aid, 677 Main Rd.

RI Yogi RAJ / No. Tiverton News, 15 Main Rd.

Step by Step Mart, 429 Main Rd. - Continued to 11/25/13

Smittom Inc / Stone Bridge Liquors, 2490 Main Rd.

Stogie's Cigar Shop. 730 Main Rd.

Tiverton Convenience Store, 29 Stafford Rd.

CHANDNI Inc. / Tiverton Liquors, 65 Main Rd.

President Roderick called for comments on the Tobacco Dealer's License Renewals. Department of Public Works (DPW) Director Steve Berlucchi, involved with the Pay As You Throw (PAYT) program noted funds were due from SFS Corp d/b/a Elaine's Country Store, \$400, and Step by Step Mart, \$5,000. The vendor, Waste Zero has sent letters, the Town gets 87% of the money. Solicitor Teitz suggested they be noticed, continue these two to the next meeting for notice, gives them the opportunity to be heard. A license is a privilege, not a right.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to continue the Tobacco Dealer's License Renewals for SFS Corp d/b/a Elaine's Country Store, 1204 Fish Rd. and Step by Step Mart, 429 Main Rd. to 11/25/13. Motion passed unanimously.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to approve the remaining Tobacco Dealer's Licenses listed for renewal from December 1, 2013 to November 30, 2014, subject to meeting all legal requirements. Motion passed unanimously.

3. Victualling License Renewals

Amerada Hess Corp (39211), 1308 Stafford Rd

Fu-Li Hua Corp., / Asian Gourmet, 1715 Stafford Rd.

Atlantic Sports Pub, Inc., 70 Shove St.

Silva Bros Inc., d/b/a Barcello's Family Rest., 1214 Stafford Rd.

Bayview Holy Ghost Citizens Club, 66 Bottom St.

Benjamin Sports Pub, Inc., 4 Stafford Rd.

Millie-Loo LLC d/b/a BISTRO 524, 520-524 Main Rd.

Black Goose Co., d/b/a Black Goose Café, 2160 Main Rd.

Boat House Restaurant LLC, 227 Schooner Drive

Kfoury Inc., d/b/a Brantal's Restaurant Banquet

& Catering Facility, 91-97 Crandall Rd.

China Gourmet, 180 Main Rd

China Sea Restaurant, 5-7 Main Rd.

Classic Pizza, Inc., 492 Main Rd.

Coastal Nutrition Inc., 1723 Stafford Rd.

Lisa Machado, d/b/a Coastal Roasters LLC, 1791 Main Rd.

Country Kitchen-Tiverton Convenience Point Inc., 31 Stafford Rd.

CVS #1086, 500 Main Rd.

Artemida, LLC d/b/a Dunkin Donuts, 496 Main Rd.

Themie, LLC d/b/a Dunkin Donuts, 1735 Stafford Rd.

East Lake Variety Inc., 750 East Rd.

Elaine's Country Store, 1204 Fish Rd – Continued to 11/25/13

Evelyn's Nanaquaket Drive-In, Inc., 2335 Main Rd.

Everett Lane Inc. d/b/a Family Ties Restaurant, 221 Main Rd.

Famous Pizza, 433 Main Rd.

Father Joseph Boehr Columbian Club, Inc., 28 Fish Rd.

Soule Seabury Assoc., d/b/a Four Corners Grille, 3841 Main Rd.

Gray's Ice Cream, Inc., 16 East Rd.

Helger's Ice Cream, 2490 Main Rd.

Joseph Daquay d/b/a Le Moulin Rouge, 1403 Main Rd.

HUEJAN INC., d/b/a Lil' Bear Sports Lounge, 983 Main Rd.

Macray's Seafood II Inc., 115 Stafford Rd.

The Moose Café Inc., 1160 Stafford Rd.

Nonni's Inc., d/b/a Nonni's Kitchen & Pasta Shop, 1154 Stafford Rd.

Faithe J. Bortz, d/b/a P.J.'s Café, 301 State Ave.

Primrose Bakery, 115 Stafford Rd.

Provender, Inc., 3883 Main Rd.

Maxi-Drug South d/b/a Rite Aid, 677 Main Road

RT 177 Flea Market Snack Bar, 1560 Bulgarmarsh Rd.

Sabitado's Pizzeria, 1204 Fish Rd.

Senior Lifestyle Sakonnet Bay LP, 1215 Main Rd.

All Fresh Donuts Corp. d/b/a Sip N Dip Donuts, 499 Main Rd.

All Fresh Donuts Corp. d/b/a Sip N Dip Donuts, 2 Crandall Rd.

Spring Restaurant, Inc., 118-120 Main Rd.

Kass Sandwich Shop Corp. d/b/a Subway of Tiverton, 1289 Stafford Rd.

Susan's Restaurant Inc., (Wally's) 13 Crandall Rd.

V.F.W. Woodrow L. Silvia Post Home Association, Inc.,

No. 5392, 134 Shove St.

Tom's Market of Tiverton, Inc., 492 Main Rd.

President Roderick called for comments three times on the Victualling License Renewals. Town Clerk had no issues.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to continue the Victualling Licenses Renewal for Elaine's Country Store, 1204 Fish Road to 11/25/13. Motion passed unanimously.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to approve the balance of the Victualling Licenses listed for renewal from December 1, 2013 to November 30, 2014, subject to meeting all legal requirements. Motion passed unanimously.

4. Holiday License Renewals

Aquidneck Fasteners, Inc., 36 Aquidneck Dr.
Bridgeport Seafood Market, 2117 Main Rd.
Cigarsmiths, 115 Stafford Rd.
Coastal Computers, 438 Main Rd.
The Cottage at Four Corners, 3847 Main Rd.
Country Auto Sales & Service, Inc., 1230 Stafford Rd.
Courtyards LTD, 3980 Main Rd.
Crows Nest farm, 467 East Rd.
Cumberland Farms, Inc., #1121, 1860 Main Rd.
CVS Pharmacy Inc., 1086,500 Main Rd.
Don's Marine Sales & Service, Inc. 2503 Main Rd.
East Lake Variety Inc. 750 East Rd.
Eds Auto Repair, 126 Bear's Den Rd.

SFS Corp d/b/a Elaine's Country Store, 1204 Fish Rd-Cont. to 11/25/13

Envy Gymnastics, Inc., 935 Main Road
Euro Gifts LLC d/b/a Fireworks Connection, 34 Main Rd.
General Auto Recycling, Inc. 384 King Rd.
Grays Ice Cream, Inc. 16 East Rd.
Hess Express #39211, 1308 Stafford Rd.
The Hose Connection, Inc., 25 Wm S Canning Blvd.
PD Humphrey Co. Inc., 590 Main Rd.
Alan J Lagasse d/b/a Lagasse Salvage Yard, Cory's Lane

Manchesters Tree & Landscaping, 2970 Main Rd.
Mello's Farm Stand/The Tasty Tomato, 1493 Bulgarmarsh Rd.
The Metal Works Corp, 3940 Main Rd.
Michael's Florist, 137 Main Rd.
Milk & Honey Bazaar, Inc., 3838 Main Rd.
M&R Feed store, Inc., 329 King Rd.
Natures! Prof. Nancy M. Swing, 1782 Main Rd.
RI Yogi Raj LLC d/b/a North Tiverton News, 15 Main Rd.
Phil's Propane, Inc. 477 Crandall Rd.
Maxi Drug South LP d/b/a Rite Aid, #10235, 677 Main Rd.
A. Latinville d/b/a Riverside Marine, 211 Riverside Drive
Sanford & Son LTD, 104 Cynthia Ave.
Silk Road Traders at Gallery 4, 3848 Main Rd.

Standish Boatyard Inc., 1697 Main Rd.

Step by Step Mart Inc., 429 Main Rd.-Cont. to 11/25/13

Tiverton Convenience Point d/b/a State Line Tobacco,
29 Stafford Rd.
DARC Inc. d/b/a Three Ducks Car Wash & Gas, 400 Main Rd.
Tiverton Auto Parts, 541 Bulgarmarsh Rd.
Tiverton Sun, 497 Main Rd.
Towne Motor Sales, 109 Main Rd.
Viti Inc., 975 Fish Rd.
William S. Sanford, Inc., 367 Bulgarmarsh Rd.

President Roderick called for comments three times, Town Clerk had no issues.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to continue the Holiday License Renewals for SFS Corp d/b/a Elaine's Country Store, 1204 Fish Rd., and Step by Step Mart Inc., 429 Main Rd., to 11/25/13. Motion passed unanimously.

Councilor Pelletier made a motion, seconded by Councilor Gerlach to approve the remaining Holiday Licenses listed for renewal from December 1, 2013 to November 30, 2014, subject to meeting all legal requirements. Motion passed unanimously.

5. Street Excavator License Renewals

Spectra Energy Corp d/b/a Algonquin, 8 Wilson Way, Westwood, MA
Camara Excavating LLC, 520 Fish Rd
C.B. Utility Co, Inc., 99 Tupelo St., Bristol
East Coast Landscaping & Construction, 202 Chase Rd, Portsmouth RI
J & A Landscaping, 911 Bulgarmarsh Rd
J.L.C. Construction, 1 Pierce Ave., Marion, MA
L.A.L. Construction, 145 Fifteenth St, Fall River, MA
Narragansett Electric Co., 477 Dexter St., Providence, RI
S. Oliveira Construction Corp, 217 Stafford Rd
Roy Ferrell/Quality Island Const., 1246 Fish Road

Scott DaSilveira-Scotts Corp., 280 Market Street, Warren, RI
Chester R. Wilkie Jr, Excavating, 211 Long Highway, Little Compton, RI

President Roderick called for comment three times on Street Excavator License Renewals. DPW Director Berlucchi supported all those listed for renewal. Councilor Arruda questioned if the renewal for LAL Construction had anything to do with ongoing litigation. Solicitor Teitz explained could be renewed, if no other particular issues.

Councilor deMedeiros made a motion, seconded by Councilor Gerlach to approve the Street Excavator License Renewals as listed for December 1, 2013 to November 30, 2013, subject to meeting all legal requirements. Motion passed unanimously.

6. Flea Market License Renewal – Tom Quellette’s Rte. 177 Flea Market, 1560 Bulgarmarsh Road

President Roderick called for comments from the public three times. Town Clerk had no issues on this item.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to approve the Flea Market License Renewal for Tom Ouellette’s Rte. 177 Flea Market, 1560 Bulgarmarsh Road, subject to meeting all legal requirements. Motion passed unanimously.

7. Mobile Home-Park License Renewals

Dadson Mobile Home Owners Assoc d/b/a Dadson Mobile Estates, 301 Bulgarmarsh Rd
Four Seasons Mobile Home Cooperative Assoc, 225 Brayton Rd
Heritage Home Park Cooperative Inc., 100 Heritage park
Pachet Brook Park Inc., 4502 Main Rd

President Roderick called for comment from the public. Town Clerk had no issues on this item.

Councilor deMedeiros made a motion, seconded by Councilor Gerlach to approve the Mobile Home Park License Renewals as listed for December 1, 2013 to November 30, 2014, subject to meeting all legal requirements. Motion passed unanimously.

8. Petroleum Storage License Renewals

Dennis Motta d/b/a Danny’s Service Station, 99 Crandall Rd
Amerada Hess Corp, 1308 Stafford Rd (39211)
Ferrellgas Inc., 896 Fish Rd
Inland Fuel Terminals, 25 State Avenue
Phil’s Bottled Gas Service, 477 Crandall Rd
SK Properties-Kingsfisher Housing Assoc, 40 Alicia Circle

Andrew E. Snider, 605 Neck Rd
DARC Inc.–Three Duck’s Gas & Car Wash, 400 Main Rd
Tiverton Marina d/b/a Standish Boatyard, 1697 Main Rd
Tiverton Sun, 497 Main Rd
Tiverton Police Dept, 20 Industrial Way
Tiverton Public Works, 50 Industrial Way

President Roderick called for comment three times from the public. Town Clerk had no issues on this item.

Councilor Gerlach made a motion, seconded by Councilor deMedeiros to approve the Petroleum Storage License Renewals as listed for December 1, 2013 to November 30, 2014 subject to meeting all legal requirements. Motion passed unanimously.

9. Fireworks License Renewals

Euro Gifts LLC/Firework Connection, 34 Main Road
North Tiverton News, 15 Main Road
NIMRAJ Inc. /Crossroads Liquors, 1540 Bulgarmarsh Road
Tiverton Convenience Point Inc., 29 Stafford Road

Step by Step Mart, 429 Main Road-Continued to 11/25/13

East Lake Variety, Inc., 750 East Lake Road

Elaine’s Country Store, 1604 Fish Road – Continued to 11/25/13

President Roderick called for public comments three times. Fire Chief Robert Lloyd was all set with the Fireworks renewals, up to code. Town Clerk had no issues with this item.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to continue Step by Step Mart, 429 Main Road and Elaine's Country Store, 1604 Fish Road to 11/25/13. Motion passed unanimously.

Councilor deMedeiros made a motion, seconded by Councilor Gerlach to approve the Fireworks License Renewals except for Step by Step and Elaine's for December 1, 2013 to November 30, 2014. Motion passed unanimously.

10. Antique License Renewal - Nancy Walker, d/b/a Artisan Antiques, 2423 Main Road

- a. Recommendation by Code Enforcement Gareth Eames
- b. Notice of Violation

Town Clerk Mello explained, did have an issue of compliance, received today from Gareth Eames, Code Enforcement, this is now in compliance. Solicitor Teitz explained this was really a second hand junk dealer's license, for buying and selling.

Councilor deMedeiros made a motion, seconded by Councilor Gerlach to approve the Antique License Renewal for Nancy Walker, d/b/a Artisan Antiques, 2423 Main Road for December 1, 2013 to November 30, 2014, subject to meeting all legal requirements. Councilor Arruda wanted to make clear the zoning violation was all set. Motion passed unanimously.

President Roderick recused, resident of Countryview Estates, left the Council table.

11. Manufactured Home Elderly Community License Renewal – Councilor Roderick Recused

- a. Planning Board Recommendation
- b. Building/Zoning Official Recommendation

Vice –President deMedeiros called for public comments. Town Clerk Mello explained noted the Planning Board recommendation, could make as a condition of the license. Solicitor Teitz pointed out the license could be renewed for less than one year if necessary, suggested continuing this to 11/25/13.

Councilor Pelletier made a motion, seconded by Councilor Gerlach to continue the Manufactured Home Elderly Community License Renewal – Councilor Roderick Recused to 11/25/13. Councilor Arruda questioned who was responsible for noticing and enforcing. Solicitor Teitz explained, the Administrative Officer of the Planning Board provided the notice, Planning Board approved. Complicated by Council creation a long time ago. The motion passed on a vote of 5-0-2, Councilor Roderick recused, Councilor Lambert abstained.

NON ADVERTISED PUBLIC HEARING FOR NEW LICENSES –Subject To Meeting All Legal Requirements

Syed Hassan Afzaal d/b/a A1 Petroleum, 861 Main Road – Requesting Approval of New Licenses

- a. Tobacco**
- b. Petroleum Storage**
- c. Holiday License**

President Roderick called for comments three times. Town Clerk Mello explained the location was the Dania Gas Station and Food Mart on Main Road. There were no comments from the public.

Councilor Gerlach made a motion, seconded by Councilor deMedeiros to approve a Tobacco, Petroleum Storage and Holiday License for Syed Hassan Afzaal d/b/a A1 Petroleum, 861 Main Road, subject to meeting all legal requirements. Motion passed unanimously.

APPOINTMENTS & RESIGNATIONS:

Scheduling of Municipal Court Judge Appointment November 12, 2013

a. Request for Re-appointment by Attorney James A. Donnelly, Jr.

b. Request for Appointment by Robert H. Humphrey, Esquire

Solicitor Teitz explained this appointment is up in an odd numbered year; have to be an attorney in good standing. Received two requests, one for reappointment, up to the Council to have advertised, do not have to, has to be made for the November term. Town Clerk Mello explained the agenda wording should have been for November 25, 2013. Police Chief Thomas Blakey, speaking in behalf of both applicants, work well with the Police Department. President Roderick, as a courtesy requested both applicants to tell a little about themselves. Attorney Donnelly was interviewed 18 months ago, an issue raised at the time was cases languishing, not the case, now moved expeditiously without sacrificing justice or fairness. The Municipal Court runs smoothly and efficiently, requesting reappointment. Thanked T/A Goncalo for years of service, wished him well in his retirement, thanked the Council as well. Attorney Donnelly was a Town Solicitor, instrumental in drafting Municipal Court legislation many years ago, saved money for the community by having hearings in between shifts.

Attorney Humphrey thanked the Council for the opportunity. Served as a Newport County Bail Commissioner for 17 years, gained judicial experience. As a Municipal Court Judge worked hard to make it a valuable asset. Revised procedures of the Court regarding officers who issued tickets to increase efficiency. President Roderick noted the Council will take under consideration at the next meeting, November 25th.

UNFINISHED BUSINESS:

FINANCIAL BUSINESS:

NEW BUSINESS:

Councilor Roderick – Scheduling of Budget Workshop With Departments and Discussion of Five Year Capital Plan

President Roderick discussed scheduling Budget Workshops. Councilor Gerlach suggested having the Police and Fire on separate nights. Solicitor Teitz was also trying to schedule a joint meeting with Bristol and Portsmouth, looking at December 2, 10 or 11th as possible dates. Councilor deMedeiros suggested the 10th, have a Council meeting on the 9th. Solicitor Teitz noted the meeting would likely be in Portsmouth at 7pm. President Roderick suggested a workshop on November 20th. Town Clerk suggested December 5th for a workshop. Town Clerk reminded the Council of the Special Meeting, Joint Workshop with the Planning Board on November 19th, will have to see what departments have a budget ready. Consensus was for budget workshops on November 20, December 5 and 19; Five Year Capital Plan will be discussed at the same time.

Councilor Roderick - Discussion and Vote on Process for Hiring of Town Administrator

President Roderick started the discussion on the process of hiring a Town Administrator (T/A), will be advertised, all applications will come to the Town Clerk; the Town Council will review, then interview. Solicitor Teitz did look into with the Clerk, the last several hires came before the Personnel Board (the Board). If looking at the Charter the Board accepts and reviews applications for all job vacancies, recommends the top 3 to the T/A. The hiring of personnel shall be done through the Board. For the past 2 Administrator hiring's done through the Board, the Town Council as the Department Head attended the interviews. President Roderick noted the Council would want to see all the applications, be part of the discussion, may see something the Board does not. Solicitor Teitz could not recall giving an opinion on this, nothing wrong with Council having access to all the applications, could do at a joint meeting. Councilor deMedeiros noted the T/A answers to the Council should be actively involved in the whole process. Councilor Arruda wanted to minimize the time the Town Clerk would serve as acting T/A. Councilor Gerlach agreed, request is to play a more active role in the process, more direct role of the Council. Solicitor Teitz noted the advertising could start right away; all applications come back to the Clerk's

office. Have several meetings scheduled in the next several months, see if the Board can come to one of them, could be on November 25th. Councilor Chabot added the applications for the Treasurer went to the Board, are capable people. Councilor Lambert agreed, the Board should be involved, provides the Council with recommendations. Councilor Pelletier was not sure the Council should take on the entire role, give the Board some direction on what the Council is looking for.

Councilor Lambert noted the process the Council adopts will be looked at in the future, important to remember is some benefit to objective oversight, Council may look at as a political perspective. President Roderick wanted an overview meeting with the Board. Town Clerk will contact the Board for the 25th at 7:30.

A 5 minute break was taken at this time, 8:50 p.m.

Upon return from the break, Councilor Pelletier suggested adding wording to the advertisement under responsibilities, union and non-union labor contract negotiations. Graduation from an accredited college or university, put words and not abbreviations for DOQ/DOE, salary commensurate with experience and qualifications, professional references. Solicitor Teitz will rewrite the sentence at the end, resumes not confidential if chosen for an interview, the max salary budgeted at the Financial Town Referendum (FTR), should say up to. Councilor Pelletier suggested adding a phone number to the ad and an email address. Rhode Island municipal government preferred, not desirable. President Roderick suggested including salary history and salary requirements, professional references. Councilor Chabot noted the Charter does not specify the type of degree. Town Clerk will forward the ad to the Council; see where it was advertised last time. Solicitor Teitz explained it could be posted with an association of cities and towns.

Councilor Pelletier made a motion, seconded by Councilor Gerlach to approve the Advertising for Town Administrator and authorize the Clerk to advertise in various publications for 30 days as amended. Motion passed unanimously.

Councilor deMedeiros – Flood Plain Management

a. Gareth Eames–Distribution of Biggert-Waters Flood Insurance Reform Act of 2012

b. Gareth Eames–Distribution of Insurance Journal Article on Delay of Flood Insurance Premium Hikes

c. Distribution of Chart from RI Department of Business Regulation Regarding Biggert-Waters Flood Insurance Reform Act of 2012

Councilor deMedeiros had received an email from a person looking to move into town, found flood insurance to be excessive. Went from \$3,600 to \$47,000, did research, ask Mr. Eames to explain why it has increased. Mr. Eames explained the Biggert – Waters Flood Insurance Reform Act of 2012 was put in place in response to a deficit in FEMA resources for several years, jeopardizing rates for flood insurance. The Act has brought about unintended consequences, houses have astounding increases. House and Senate members are working on a plan to fix to make rates more affordable. Will only affect as a primary residence. Nothing will be solved unless repealed or tremendously modified. Councilor Lambert noted owners will no longer get a subsidy; insurance premiums will go up substantially. Mr. Eames suggested getting an Elevation Certificate done by an engineer, is a process, another way is for the community to join a Community Rating System, a survey of the communities ability to withstand storms. This is a cumbersome project; to get a good grade will result in a 25% reduction. Presently working on that, 50% through the process. Do not have the help to do it, a very big job. When finished goes before an ISO committee, have a checklist for progress. Solicitor Teitz explained the community rating has important elements, essentially eliminates variances for the flood zone requirement, need to be prohibited from doing this. There are a lot of old properties along the shore, not an end all to the higher cost. Solicitor Teitz added one of the major exceptions is if it is in the National Register of Historic Place or in a Historic District. Councilor Chabot suggested contacting the Senators and Congressman.

BIDS AND REQUESTS FOR PROPOSALS:

TOWN ADMINISTRATOR ITEMS AND ANNOUNCEMENTS:

Request Approval of Submission to DEM for Soccer Complex Grant

T/A Goncalo requested postponing this to the next meeting, submitting additional documentation.

1. Recycling in September 167 tons, same as last year.
2. Yard waste pick up through November 18, put out with regular trash.
3. King Road closed to traffic from Brayton Road to M&R Feed starting 11/6/13-11/15/13, 7am to 3:30pm.
4. Tiverton Library, fines amnesty, donate food equal to the fine, call 625-6796 ext10.
5. Tax sale finished, started with 107, down to 7, 3 sold netting the Town \$36,568 in back taxes, Town to take remaining 4.

Town Administrator James Goncalo's last Council meeting, thanked everyone for the support, appreciation, honor to serve.

COUNCIL ANNOUNCEMENTS, COMMENTS AND QUESTIONS:

President Roderick thanked Mr. Goncalo, served the Town well. Suggested putting on the agenda for 11/25/13, a request to continue Mr. Goncalo's health benefits to 12/31/13. Councilor Gerlach questioned closing King Road, the alternate route. DPW Director Berlucchi explained was closed for through traffic, open for local access only. Councilor Chabot invited all to the Arts Reception, Sunday 11/17 from 2-4, a Small Picture Show. Councilor Pelletier repeated a request for a memorandum on use of the bike lane relative to parking and awareness and on the advertising policy. Solicitor Teitz had not forgotten, other issues had precedence. Still working on Bed & Breakfast memo and Winterberry Woods subdivision.

TOWN SOLICITOR – ITEMS AND ANNOUNCEMENTS:

O'Dell et al v. Town of Tiverton – Release of Documents

Solicitor Teitz explained this release of documents was agreed upon 9/23/13 provided with Exhibits, history of conversations regarding settlement of the case. Exhibit E essentially is the position of the Plaintiff's under what condition they would settle the case, Exhibit F is the position of the Town to date and under what conditions the Council is willing to settle. Solicitor Teitz pointed out these are settlement discussions governed by Rule 408 of the Rules of Evidence, can't be admitted for evidence in Court, can't be used by either party.

McLaughlin v. Tiverton Zoning Board - Appeal to Supreme Court

a. Motion to Dismiss Appeal b. Memorandum in Support of Motion to Dismiss Appeal

Solicitor Teitz previously informed on this issue, provided copies of documents for Supreme Court regarding an illegal structure, the Plaintiff's appealed, Pro Se, no attorney. The Town filed a Motion to Dismiss Appeal concerning the appeal to Supreme Court; have to file a Writ with that court.

Tiverton v. James and Melissa Pelletier – Appeal to Supreme Court

a. Solicitor's Correspondence to Judge Melanie Wilk Thunberg

Solicitor Teitz briefly recapped previously received a decision that James and Melissa Pelletier violated the zoning ordinance by manufacturing compost. They are appealing to the Supreme Court, Town does not think is timely, requesting a meeting with Judge Thunberg to clarify procedure.

Update on Sakonnet River Bridge Tolls Lawsuit

Solicitor Teitz provided copies of documents filed by the Town of Portsmouth, Judge has not ruled on the Motion to Intervene by Bristol and Tiverton, have attended court, worked with the Portsmouth Solicitor. Asking for Summary Judgment on Count 1 of the amended complaint the DOT and Federal Highway missed the time frame;

believe Federal law does not talk about substantial completion. Do not know when this will be heard. As mentioned earlier, trying to set up a joint meeting with Portsmouth and Bristol. Another aspect of this issue has to do with the Prudence Island ferry.

Draft Ordinance and Regulations on Creation of Four Corners Historic District

a. Historic District Ordinance for Public Hearing

b. Edited Copy of Advisory Board Proposal

c. Rules of Procedure

d. Application Package

Solicitor Teitz briefly discussed the Draft Ordinance and Regulation on Creation of Four Corners Historic District, for Council information at this point. Need about 6 weeks to schedule a public hearing at least 3 weeks for zoning advertising. President Roderick suggested putting on a future agenda to discuss and schedule a public hearing.

TOWN CLERK ITEMS AND ANNOUNCEMENTS:

Agenda for Joint Meeting With Planning Board on Form Base Code and Discussion of Quarry Licenses on Tuesday, November 19th

Town Clerk Mello provided a draft of the agenda for next Tuesday, added a general discussion on Quarry License process.

Approval of 2014 Meeting Schedule

Town Clerk Mello explained the Town Council 2014 Meeting Schedule needs to be posted by the end of December, request a preference for a date on the first April meeting. Solicitor Teitz explained, was a conflict, and suggested moving to the first Monday in April.

CLOSED EXECUTIVE SESSION:

1. Town Solicitor – 42-46-5(a) (2) – Litigation - Lawsuit: Fireman’s Fund Insurance Company v. Joseph Fiorenzano v. Gareth T. Eames

Councilor Lambert made a motion, seconded by Councilor Chabot to enter into Closed Executive Session pursuant to 42-46-5(a) (2) - Litigation - Lawsuit: Fireman’s Fund Insurance Company v. Joseph Fiorenzano v. Gareth T. Eames. Motion passed unanimously,

2. Town Administrator – 42-46-5(a) (5) - Acquisition of Real Property for Public Purposes – Stone Bridge Gas Station

Councilor Lambert made a motion, seconded by Councilor Chabot to stay in Closed Executive Session pursuant to 42-46-5(a)(5) - Acquisition of Real Property for Public Purposes – Stone Bridge Gas Station. Motion passed unanimously,

3. Town Solicitor – 42-46-5(a) (2) - Litigation – Sandywoods Homes, Inc. et. al. v David Robert in His Capacity of Tax Assessor for Town of Tiverton

Councilor Lambert made a motion, seconded by Councilor Chabot to stay in Closed Executive Session pursuant to 42-46-5(a) (2) - Litigation – Sandywoods Homes, Inc. et. al. v David Robert in His Capacity of Tax Assessor for Town of Tiverton. Motion passed unanimously.

4. Town Solicitor - 42-46-5(a) (4) – Investigation – Maintenance Foreman

Councilor Lambert made a motion, seconded by Councilor Chabot to stay in Closed Executive Session pursuant to 42-46-5(a) (4) – Investigation – Maintenance Foreman. Motion passed unanimously.

The Council entered into Executive Session at approximately 9:55 p.m.

The Council returned to Open Session at approximately 10:50 p.m.

OPEN SESSION:

In Opens Session President Roderick announced no formal action had been taken.

Councilor Lambert motioned to seal the minutes of Executive Session, seconded by Councilor Gerlach, motion passed unanimously.

ADJOURNMENT:

Councilor Gerlach motioned to adjourn, seconded by Councilor Arruda, motion passed unanimously.

Council adjourned at approximately 10:55 pm.

A True Copy.

ATTEST: _____
Nancy L. Mello, Town Clerk

TOWN OF TIVERTON

ORDINANCE

OF THE

TOWN COUNCIL

**Chapter 47 FORECLOSED AND VACANT PROPERTIES
ARTICLE I. Maintenance and Monitoring of Vacant Buildings**

WHEREAS: The Town Council adopts this ordinance for the immediate preservation of the public peace, health or safety, and the Council finds that Tiverton is facing an unprecedented threat to its state economy and local economies because of falling property values due to foreclosed and vacant dwellings and buildings in Tiverton.

NOW, THEREFORE, IT IS HEREBY ORDAINED:

AN ORDINANCE ESTABLISHING CHAPTER 47,

Section 47-1 Findings and purpose.

- (a) The Town Council finds, determines and declares that buildings which remain vacant and unoccupied for any appreciable period of time become an attractive nuisance to children, a harborage for rodents, and as a place to engage in illegal conduct, frequently including illegal drug-related activity, and an increased fire hazard; that unkempt and unsecured grounds surrounding such buildings invite the dumping of garbage and trash thereon and the congregation of unauthorized persons who use the property for illegal activity; that such buildings contribute to the growth of blight within the Town, depress market values of surrounding properties, thereby reducing tax revenues, necessitate additional governmental services, significantly interfere with the use and enjoyment of neighboring properties, create an unhealthy and unsafe condition affecting the public and constitutes an unreasonable use of property and a public nuisance.
- (b) It is a responsibility of property ownership to prevent owned property from becoming a burden to the neighborhood and community.
- (c) Protection of the public health, safety and welfare requires the establishment and enforcement of the means by which such nuisance conditions may be prevented and abated.
- (d) Many vacant abandoned real properties are the responsibility of out-of-area owners, banks, lenders and/or trustees.
- (e) Even one vacant property that is not actively and well maintained, monitored and managed can be the core and cause of spreading blight and crime.
- (f) It is in the interest of the welfare of neighborhoods that owners who fail to maintain property and correct vacant and blighted buildings property, fail to correct substandard structures and blighted conditions or who otherwise allow the structures to remain in violation of this Code be subject to imposition of administrative fines in order to encourage these owners to correct violations of this chapter in a prompt manner.

Section 47-2 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

“Enforcement Official” means the Building Official, and/or designee.

“Vacant Property” means any real property condition that independently, or in the context of the totality of the circumstances relevant to that real property would lead a reasonable enforcement official to believe that a property is vacant or occupied by a person without a legitimate right of occupancy. Such conditions include but are not limited to: overgrown

or dead vegetation; accumulation of newspapers, circulars, flyers or mail; past due utility notices or disconnected utilities; accumulation of trash, junk, garbage or debris; the absence of window coverings such as curtains, blinds, drapes or shutters; the absence of furnishings or personal items consistent with residential habitation; and/or statements by neighbors, delivery agents, letter carriers, government employees or passersby that the property is vacant.

“Owner” means the person identified and listed as having title to the Property (as defined below) by the latest property tax assessment rolls maintained by the Tiverton Tax Assessor.

“Property” means any real property interest or estate which may be granted or devised by deed and subject to this Ordinance. The word “Property” includes tracts, lots, easements, or parcels of land and any and all improvements thereon.

“Secured” means having taken such measures as may be directed by the Enforcement Official that assist in rendering the Property inaccessible to unauthorized persons in addition to boarding door and windows, including but not limited to repairing fences and walls, chaining/padlocking gates and erecting barrier fences.

“Vacant and Unoccupied Building” means any building or other structure which is neither occupied nor used by persons authorized by the Owner of the property on which such building or structure is located. It shall also include any Vacant and Unoccupied Building or structure that is subject to a current Notice of Default, Notice of Trustee’s Sale, pending Tax Assessors Lien or any real property conveyed via a foreclosure sale resulting in the acquisition of title by an interested beneficiary of a deed or trust or any property conveyed via a deed in lieu of foreclosure/sale.

Section 47-3 Application.

(a) The provisions of this chapter shall apply generally to all real property throughout the Town of Tiverton wherein any of the conditions, specified in this chapter, are found to exist.

(b) Provisions of this chapter are to be supplementary and complementary to all of the provisions of the Tiverton Town Code, state law, and any law cognizable at common law or in equity, and nothing in this chapter shall be read, interpreted or construed in any manner so as to limit any existing right or power of the Town of Tiverton to abate or prosecute any and all violations and nuisances.

Section 47-4 Authority—Enforcement Official.

The Enforcement Official (Building Official) is authorized and directed to use the provisions of this chapter for the purpose of abating those conditions defined by this chapter as a public nuisance or abating the unlawful conditions defined herein.

Section 47-5 Responsibility for Property Maintenance

Every Owner of Property within the Town is required to maintain such Property in a manner so as not to violate the provisions of this chapter or this Code and such Owner remains liable for violations thereof regardless of any contract or agreement with any third party regarding such Property.

Section 47-6 Violations

(a) Any person, firm or corporation who is the Owner of Property who violates the provisions of this Code is guilty of a misdemeanor for each day, or portion thereof, such violation continues. Each day of violation shall constitute a separate offense.

(b) It shall be unlawful and a public nuisance for any Owner of Property in this Town to maintain, permit, suffer or allow such vacant Property to be maintained in such a manner that any one or more of the following conditions are found to exist for more than 15 days following notification to the "Owner", unless it is an immediate threat to health or public safety:

(1) Any vacant building whose doors, windows or other openings are broken or missing, so as to allow access to the interior.

(2) Any vacant building and premises in violation of any of the provisions of this Code or any provisions of this chapter.

(c) It shall be unlawful and a public nuisance for any Owner to allow a building designed for human use or occupancy to be a vacant building for more than sixty (60) days, unless one of the following applies:

(1) The building is the subject of an active building permit for repair, rehabilitation or demolition and the Owner is progressing diligently to complete the repair, rehabilitation or demolition, or

(2) Is actively being maintained and monitored by the Owner or the Owner's authorized representative and is being maintained in compliance with all other sections of this Code.

Section 47-7 Maintenance and Monitoring of Vacant Buildings

(a) Owners of any vacant commercial or residential building or structure, and premises thereon, shall maintain and monitor the subject Property as follows:

(1) Within ten (10) days of obtaining the vacant Property, or the Property becoming vacant, the Owner or the Owner's agent shall post a Notice in a conspicuous place on the front of the building stating the name, address and telephone number of the Owner and, if applicable, the Owner's agent in control of the building. The Notice shall have black lettering not less than two (2) inches high and be readable from at least thirty (30) feet away. For any commercial or residential building that is used for seasonal occupancy only, the Notice of Vacancy need not be posted on the exterior of the building, provided that the building is not vacant for more than eight (8) months in any 12 month period. A copy of the "Notice of Vacancy" shall be delivered to the Town Clerk's Office to be distributed to the Police Department, the Fire Department, and the Building Inspector, and/or "Enforcement Official".

(2) Within ten (10) days of obtaining the vacant Property, or the Property becoming vacant, the Owner or the Owner's agent shall conduct an inspection of the interior and exterior of the building and the premises for any violation of this chapter or applicable state law and immediately correct all violations.

(3) Thereafter, an inspection of the Property must be conducted no less than once every fourteen (14) days to ensure the Property is properly maintained. Proper maintenance includes, but is not limited to, regular removal of trash, rubbish and debris, maintenance of landscaping and plants in good healthy condition, maintenance of the exterior of the building, including paint and finishes in reasonable condition, removal of dead, dying or overgrown vegetation and preventing the use of the Property by unauthorized persons.

(4) The Property shall be maintained free of graffiti, tagging or similar marking. Any removal of graffiti shall be with an exterior grade paint that matches reasonably the color of the exterior of the structure.

Section 47-8 Abatement procedure.

(a) Whenever the Enforcement Official has inspected or caused to be inspected any Property and determined that such Property is in violation of this chapter, the Enforcement Official shall commence proceedings to cause abatement of the nuisance as provided in this Code.

(b) Upon determining that Property located in the Town of Tiverton is not secured or Boarded, or is improperly secured or Boarded, or is not being maintained or monitored, the Enforcement Official shall issue a notice of violation and demand to abate directed to the Owner of the Property. The written notice shall be served either by personal delivery upon the record Owner or by mailing a copy to the record Owner by certified mail to the Owner's last known address as it appears on the latest assessment roll of the Town of Tiverton.

(c) After the written notice has been served, it shall be the duty of the Owner to abate such violation within the time specified by the notice, but not less than 15 days unless it is an immediate threat to health or public safety.

Section 47-9 Abatement by Town.

(a) In the event the violation is not abated within the time specified in the notice, the Town may take all necessary actions to compel compliance to abate such violation, including but not limited to, the proper boarding of the Property. In addition to incurring penalties as provided in this chapter, the Owner shall become personally indebted to the Town of Tiverton for the costs of the boarding and the reasonable administrative costs of abatement and enforcement incurred by the Town by reason of the existence of the violation. These costs may alternatively be assessed as a lien against the Property on which the violation existed.

(b) The Enforcement Official shall keep an itemized account of the expense incurred by the Town in abating violations under this chapter. After the completion of the work of abatement, the Enforcement Official shall cause an itemized bill of the expenses to be mailed to the Owner.

Section 47-10 Emergency abatement.

(a) If, in the opinion of the Enforcement Official, there exists a condition on any Property which is of such a nature as to be imminently dangerous to the public health, safety or welfare, which, if not abated, would, during the pendency of the abatement procedures set forth in this chapter, subject the public to potential harm of a serious nature, the same may be abated by the Town forthwith without prior notice to the Owner, but with concurrent notice being sent to the "Owner" and the "Owner's" agent.

THIS ORDINANCE WILL TAKE EFFECT UPON PASSAGE